

Michigan Judicial Institute Seminar

Small Claims 101

April 28, 2003

FACULTY:

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Jurisdiction - MCLA 600

Venue of Actions

Classes of District Courts 600.8108

Actions filed in First Class Districts –

1. Requirements 600.8415(2)

Actions filed in Second / Third Class –

1. Requirements 600.8415(2)

Actions against Cities, Villages, Townships and Counties 600.8415(3)

1. First Class Districts 600.8415(3)
2. Second or Third Class Districts 600.8415(3)

Venue of Actions

Actions against School Districts 600.8415(4)

Venue when party removes action from small claims 600.8415(5)

Parties and Pleadings

No assignees or third party beneficiary claims 600.8407

Limitations on filings 600.8407(2)

Who files for Sole Proprietorship, Partnership or Corporation 600.8407(3)

Parties and Pleadings

Representation by Parties

1. No attorneys 600.8408

In Re Goehring, 184 Mich App 360 (1990)

Senate Bill 196, 1995

2. Representation by Sole Proprietorship, Partnership, or Corporation 600.8408(2)

3. Representation by County, City, Village or Township, School District 600.8408(3)

Parties and Pleadings

Counterclaim

1. What constitutes a Counterclaim 600.8422
2. Counterclaim that exceeds jurisdiction 600.8408(2)

Statement of Claims MCR 4.302

1. Statutory Form MCR 4.302(A)
2. Signature on Affidavits
3. Defendant's Name 600.8426

Removal of Small Claims

Before Trial 600.8408(4)

At Trial 600.8411

1. Requirements of Right to Remove 600.8411
2. Rights Waived 600.8412
3. Trial before District Judge 600.8408(4)
4. Appeal Right 600.8427

Procedure Used to Remove MCR 4.306(A)

1. In Re Lafayette Towers, 200 Mich App 269 (1993)
2. Time Limitations

Procedure After Removal MCR 4.306(B) (C) (D) (E)

Affidavit Requirements

Instruction Sheets 600.8401

Commencement of Action Using Affidavit 600.8402(1)

1. Contents .8402(2)
2. Notice of Right to Remove .8402(2)

Printed Form 600.8403

Courts to Furnish Forms 600.8419

Prevailing Party Entitled to Costs 600.8421

Service of Process

Time Requirements for Appearance 600.8406)

Time Requirements for Service 600.8406)

Lack of Service within Time Limits 600.8406(2)

Service of Process

Defendant's Information Required in Affidavit 600.8404

1. Bring Information
2. Failure to Appear
3. Settlements
4. Installment Payments

Service by Certified Mail MCR 4.303

1. Negatives
2. Exceptions MCR 4.303(B)

Trial

Trial Procedures 600.8411(2)

1. Informal Manner
2. Substantial Justice
3. Not Bound by Rules
4. No Verbatim Record

a. Exception by Most Courts

Appearance and Non-Appearance MCR 4.304

Filing and Scheduling Hearings After Hours 600.8416(2)(3)

Judgments

Settlement Review by Court 600.8410(1)

Installment Payment Orders 600.8410(2)

1. Modification
2. Setting Aside

Asset Disclosure 600.8410(5) MCR 4.305(C)

1. 30 Day Rule

Default Judgment

1. Conflict with 30 Day Rule

Certification of Judgment 600.8414

Post Judgment

No Pre-Judgment Attachment or Garnishment 600.8409(1)

Instructions for Execution, Attachment or Garnishment 600.8409(1)

Periodic Garnishments Allowed 600.8410(1)

Miscellaneous

Small Claims Governed By:

Michigan Court Rules

Chapter 84, Revised Judicature Act

Writ of Superintending Control Improper

Schomaker v Armour, Inc. 217 Mich App 219 (1996)

Learning Objectives

The Four Goals of Small Claims Court

Pre-Trial Assistance to the Litigants

Scheduling

The Conduct of a Hearing

Post-Trial Remedies

WHY Small Claims Are Tougher

- Issues
- Preparation Time for the Court
- The Pro-Se Litigant
- Time – Labor Intensive Cases
- Judicial Activism

Good Stuff About Small Claims

- Impact on public perception of the Court system
- Easiest access to the Courts for citizens – both individual and businesses to redress their grievances
- What people want:
 - Case processing time
 - Length of time waiting on trial day
 - Perceived helpfulness of the clerk's
- Develop a system

Four Main Goals of Small Claims Court

- Quickly
- Without complications
- Inexpensively
- Fairly

Purposes of Pre-Trial Assistance

- Set realistic expectations
- Helps prevent the giving of legal advice at the counter
- Catch the obvious mistakes quickly
- Most common mistakes by Plaintiffs
- Most common mistakes by Defendants

Scheduling

- STRAIGHT:
 - All cases, same day, same time
- STAGGERED:
 - Scheduling cases every 30-40 minutes
- CASE TYPE:
 - Scheduling based on type of case (eg. auto repair, landlord-tenant)

Straight Scheduling

ADVANTAGE:

Avoids “down time” for court by getting all the litigants there at the same time

Allows for the processing of a large number of cases

DISADVANTAGE:

Increases wait time for litigants

May give appearance of unimportance

Staggered Scheduling

ADVANTAGE:

Reduces waiting time for litigants

Allows time for difficult cases

Gives appearance of individual treatment

DISADVANTAGE:

Increases “down time” for court

Case Type Scheduling

ADVANTAGE:

Avoids appearance of favoritism to business plaintiffs

May assist court where an expert witness is needed

DISADVANTAGE:

May not be enough cases of an individual type

Checklist for Conducting A Trial

REVIEW FILE TO:

Determine whether an intentional tort is alleged

Sort files by their probable length of hearing time

Research any special statutes that may apply

Check to see if service is proper

Checklist for Conducting A Trial

BEFORE CALLING THE FIRST CASE:

Introduce yourself

Take role

Explain the four rights

Checklist for Conducting A Trial

Call the case and identify the parties and witnesses

Obtain a written waiver of the four rights or have each party place their waiver on record

Ask if either party wishes the case removed to the general civil division...

Checklist for Conducting A Trial

- Swear in all parties and witnesses
- Proceed in the same order as any civil non-jury trial
- Do all of the questioning
- Do not allow any party or witness to interrupt the testimony of another...

Checklist for Conducting A Trial

- After the Plaintiff has testified, ask the Defendant if he/she has any question they would like the Court to ask
- Narrow the issue(s)
- Examine any exhibits
- Make a view if necessary

Checklist for Conducting A Trial

- End all questioning with: "Is there anything else anyone wants to tell me that I haven't already heard?"
- Determine the proper measure of damages
- Make parties aware that the testimony has concluded and Court will render a decision...

Checklist for Conducting A Trial

- Make specific findings of fact, recite the law, and apply the facts to the law
- Complete Judgment form and deliver to parties

Suggestions

- Review affidavits ahead of time
- Develop a pre-trial assistance procedure for both parties
- Watch out for errors of law made by parties
- Make sure service of process was proper
- Make your decision at the conclusion of the trial ...

Suggestions

- Do not take a matter under advisement unless:
 - You are unsure of the law
 - You need to make a view
 - To defuse a tense situation
- Find a factual and legal basis
- Be informal

Suggestions

- Rules of evidence do not apply except for privileged communications
- Develop post-trial procedure for plaintiff to assist in collection of judgment
- Obtain information from defendant at conclusion of trial